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JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,
Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (Three Rivers, Michigan),
COMMERCIAL NATIONAL BANK OF IRON
MOUNTAIN,

THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COMPANY
OF KALAMAZOO,

banking associations organized under the laws of the
United States,
Intervening Plaintiffs,
vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, State Commissioner of Revenue,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

MOTION OF SIXTY-EIGHT BANKS IN
MICHIGAN FOR LEAVE TO FILE THE
ATTACHED BRIEF AS AMICI CURIAE
AND BRIEF AMICI CURIAE

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Attorneys for the Applicant
Michigan Banks.

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MOTION FOR LEAVE TO FILE A BRIEF
AS AMICI CURIAE

THE NATURE OF THE APPLICANTS' INTEREST

The undersigned moving parties are national and state banks doing business in Michigan and taxed under Act 9 of the Public Acts of Michigan of 1953. Two of them, The Community National Bank of Pontiac and Community National Bank of Ithaca, are in identical positions with the Plaintiff, having paid the 1952 tax under protest and having started suits for recovery, which, however, have been adjourned pending the outcome of this appeal. Those two banks sought unsuccessfully to intervene in this cause. Most of the others have not paid the tax under protest but are deeply concerned over the impact of an adverse decision on their future operations.

The interests of national banks is obvious; that of the state banks, although not so apparent, is equally vital because if the state act in question is held inoperative as to national banks, which it should be, state banks would then be taxed higher than national banks in violation of the Fourteenth Amendment to the Constitution. This was the holding of the Wisconsin Court in *Ashland County Bank v. Village of Butternut*, 208 Wis. 90, 241 N. W. 638. The solution, obviously, is not to eliminate the tax but to abolish the discrimination by taxing the savings and loan associations in like manner as the national and state banks.

THE FACTS WHICH IT IS BELIEVED WILL NOT ADEQUATELY BE PRESENTED

The Michigan Supreme Court in its opinion below, 358 Mich. 611, at 615, quoted from the following excerpt of the trial court's opinion, stating:

"The Michigan Bankers Association (representing both State and national banks) has been permitted to file a brief as *amicus curiae* in which it states the position of its members * * *"

to the effect that Act 9 of the Public Acts of Michigan of 1953, taxing shares of banks, was "equitable from the viewpoint of competitors * * * has not created any competitive disadvantage among the various institutions * * * is obviously desirable."

The statement by the trial judge that this brief stated the position of the member banks of the Michigan Bankers Association was an unfortunate inference, totally unsupported by the record.

The brief *amicus* of the Michigan Bankers Association only stated the views of the few men making up that organization's tax committee and did not state the position of its member banks, who have had no opportunity to vote or otherwise express their views on the question.

The banks herein represented do not agree with the position stated in that brief, in fact are directly opposed to it, and seek to file their brief herein as their only available means of presenting their actual position to the Court. This position, in substance, is that because Act 9 of the Public Acts of Michigan of 1953 imposes a very substantially higher tax on bank shares than upon moneyed capital invested in savings and loan association shares, it is unlawfully discriminatory in that it gives to savings and loan associations an unfair and unjustified competitive advantage in a vital and substantial part of the banks' lending business, that of residential mortgage loans.

It is submitted that the evidence produced at the trial of this cause completely negates the statement of the

Michigan Bankers' Association's tax committee that the state act in question "has not created any tax competitive disadvantage" and that that statement has no basis whatsoever in the record.

REASON FOR BELIEVING ABOVE FACTS WILL NOT BE PRESENTED BY THE PARTIES

Applicants, through their counsel, have had an opportunity to inspect Appellant's brief and do not find that the accuracy of the quoted statement as to the position of the Michigan banks is discussed therein.

RELEVANCY

It is obvious that the opinion of a group of Michigan Bankers on a constitutional question is not material to a determination of that question and should not be considered by the Court. However, where one of the issues in the cause is the question of competition between savings and loan associations and banks, and the opinion is that the statute "has not created any competitive disadvantage", the suggestion that this opinion is held by the member banks, a suggestion totally unsupported by the record, becomes important. The undersigned member banks emphatically disagree. Their experience demonstrates that the savings and loan associations have become their greatest competition in the residential mortgage loan business.

CONCLUSION

Both parties have been requested to consent to the filing of a brief on behalf of the applicant banks. Appellant has consented thereto, but Appellees have refused consent.

Because of their vital interest in the outcome of this appeal, the applicants respectfully request the right to file their brief *amici curiae* herein.

Respectfully submitted,

DEAN G. BEIER,
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Attorneys for:

Community National Bank of Pontiac
National Bank of Royal Oak
First National Bank, Quincy, Michigan
National Bank of Hastings
Security National Bank of Manistee
The Midland National Bank
National Bank of Eaton Rapids
First National Bank of East Lansing
First National Bank of Mt. Clemens
National Bank of Richmond
First National Bank of Niles
First National Bank, Sturgis, Michigan
First National Bank, Cassopolis, Michigan
Hillsdale County National Bank
St. Clair Shores National Bank
National Bank of Jackson
Community National Bank of Ithaca
First National Bank of Kalamazoo
First National Bank of Three Rivers
National Bank of Wyandotte
Community State Bank, St. Charles, Michigan
Lapeer Savings Bank

(List of Banks concluded on next page).

Farmers & Merchants State Bank,
 Merrill, Michigan
 Commercial Savings Bank, St. Louis, Michigan
 Woodruff State Bank, DeWitt, Michigan
 Loan and Deposit State Bank,
 Grand Ledge, Michigan
 Peoples State Bank, Williamston, Michigan
 The Farmers Bank of Mason
 Isabella County State Bank, Mt. Pleasant, Michigan
 Peoples State Bank of Caro, Michigan
 Saginaw Valley Bank
 Capac State Savings Bank
 Howard City State Bank
 The Morley State Bank
 First State Bank of Greenville
 Wyoming State Bank, Wyoming Township,
 c/o Grand Rapids, Michigan
 Moline State Bank
 Calhoun State Bank, Homer, Michigan
 Delton State Bank
 The Grosvenor Savings Bank, Jonesville, Michigan
 Hillsdale State Savings Bank
 The Olivet State Bank
 Springport State Savings Bank
 Wayne Oakland Bank, Royal Oak, Michigan
 Clarkston State Bank
 State Bank of Perry
 Bank of Albion
 Peoples State Bank of Bronson
 Peoples State Bank of St. Joseph
 Cass County State Bank, Cassopolis, Michigan
 Benton Harbor State Bank
 Union State Bank, Buchanan, Michigan
 Industrial State Bank, Kalamazoo, Michigan
 Newport State Bank
 The Michigan Bank, Detroit, Michigan
 Coopersville State Bank
 River Rouge Savings Bank
 Hemlock State Bank
 State Bank of St. Johns
 State Savings Bank, Clinton, Michigan
 Citizens State Savings Bank of New Baltimore
 Mt. Clemens Savings Bank
 Macomb County Savings Bank, Richmond, Michigan
 Citizens Bank of Saline
 Saline Savings Bank
 United Savings Bank of Tecumseh
 Milan State Bank
 Farmers State Bank of Concord

BRIEF AMICI CURIAE OF BANKS OPERATING IN MICHIGAN

The undersigned banking associations operating in the State of Michigan have a real concern about the outcome of the appeal in this cause because of the serious impact it may have upon their future operations.

It is their position that savings and loan associations are their most vigorous competitors in the business of making residential mortgage loans, which is a most vital and important part of the lending business of the undersigned banks.

The suggestion to the contrary, an inference drawn by the Trial Court from the mere fact of the filing of the brief of Michigan Bankers Association, a brief which did not state that the position taken was that of its member banks, was not record supported and in fact not true. The views expressed in that brief were those of the Association's tax committee and certainly were not those of the undersigned banks.

This brief is submitted in support of the position of the Appellant that Act 9 of the Public Acts of Michigan of 1953, which imposes a tax on bank shares eight to thirteen times greater than that imposed upon moneyed capital invested in savings and loan associations, is discriminatory, highly inequitable and has created a great and unwarranted competitive advantage to the savings and loan associations in Michigan.

CONCLUSION

To safeguard the interests of banks in the State of Michigan, we respectfully submit that this Court should uphold the position of the Appellant in the above cause and reverse the judgment of the Michigan Supreme Court.

Respectfully submitted,

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